THE PRESIDENCY-TOWNS INSOLVENCY AND THE PROVINCIAL INSOLVENCY (BOMBAY AMENDMENT) ACT, 1939.

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BOMBAY ACT No. XV OF 1939.[1]

[THE PRESIDENCY-TOWNS INSOLVENCY AND THE PROVINCIAL INSOLVENCY (BOMBAY AMENDMENT) ACT, 1939.]

[*19th June 1939.*]

An Act to amend the Presidency-towns Insolvency Act, 1909[2] and the Provincial Insolvency Act, 1920[3] in their application to the Province of Bombay.

III of 1909. V of 1920. WHEREAS it is expedient to amend the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, in their application to the Province of Bombay for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Preidency-towns Insolvency and the Provincial Insolvency (Bombay Amendment) Act, 1939.

III of 1909. 2. In the Presidency-towns Insolvency Act, 1909,—

Amendment of sections 9 and 112 of Act III of 1909 and insertion of new sections 9A and 101A therein.

(*a*) In section 9 after clause (*h*), the following new clause shall be inserted, namely :—

"(*i*) if, after a creditor has served an insolvency notice on him in respect of a decree or an order for the payment of any amount due to such creditor, the execution of which is not stayed, he does not within the period specified in the notice which shall not be less than one month comply with the requirements of the notice :

Provided that the debtor shall not be deemed to have committed an act of insolvency for not complying with the requirements of the notice, if he has a counter-claim or set off which equals or exceeds the decretal amount or the amount ordered to be paid by him and which he could not lawfully set up in the suit or proceeding in which the decree or order was made against him " ;

(*b*) after section 9, the following new section shall be inserted, namely :—

Insolvency notice. "9A. (*1*) An insolvency notice under this Act shall be in the prescribed form and shall be served in the prescribed manner. It shall require the debtor to pay the amount due under the decree or order, or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent and shall state the consequences of non-compliance with the notice.

(*2*) Such notice shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement ; but if the debtor does not give such notice, he shall be deemed to have complied with

[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1938, Part V, pp. 595-596, *or* Bombay Legislative Assembly Debates, 1939, Vol. 5, p. 3681 *or* Bombay Legislative Council Debates, 1939, Vol. 6, p. 724 ; for Proceedings in Assembly, *see* Bombay Legislative Assembly Debates, 1939, Vol. 5, pp. 3104-3108 ; and for Proceedings in Council *see* Bombay Legislative Council Debates, 1939, Vol. 6, pp. 309-339.

[2] Central Acts, Vol. III.

[3] Central Acts, Vol. VII.

the insolvency notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein " ;

(*c*) after section 101, the following new section shall be inserted, namely :—

Limitation.

" 101A. Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or application for the execution of a decree (other than a suit or application in respect of which leave of the Court was obtained under section 17) which might have been brought or made but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded :

Provided that nothing in this section shall apply to a suit or application in respect of a debt provable but not proved under this Act " ; and

(*d*) in sub-section (2) of section 112, after clause (*a*) the following clause shall be inserted, namely :—

" (*aa*) the form of insolvency notice and the manner in which it may be served ; " .

Amendment of sections 6 and 79 of Act V of 1920 and insertion of new section 6A therein.

3. In the Provincial Insolvency Act, 1920,— V of 1920.

(*a*) in section 6, after clause (*h*), the following new clause shall be inserted, namely :—

" (*i*) if after a creditor has served an insolvency notice on him in respect of a decree or an order for the payment of any amount due to such creditor, the execution of which is not stayed, he does not within the period specified in the notice which shall not be less than one month comply with the requirements of the notice :

Provided that the debtor shall not be deemed to have committed an act of insolvency for not complying with the requirements of the notice, if he has a counter-claim or set off which equals or exceeds the decretal amount or the amount ordered to be paid by him and which he could not lawfully set up in the suit or proceeding in which the decree or order was made against him " ;

(*b*) after section 6, the following new section shall be inserted, namely :—

Insolvency notice.

" 6A. (*1*) An insolvency notice under this Act shall be in the prescribed form and shall be served in the prescribed manner. It shall require the debtor to pay the amount due under the decree or order, or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent and shall state the consequences of non-compliance with the notice.

(*2*) Such notice shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement ; but if the debtor does not give such notice, he shall be deemed to have complied with the insolvency notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein. " and

(*c*) in sub-section (*2*) of section 79, after clause (*a*) the following clause shall be inserted, namely :—

" (*aa*) the form of insolvency notice and the manner in which it may be served ; " .